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## EXPEDITED CONSIDERATION REQUESTED

March 21, 2003

### BY HAND

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings  
MAR 21 2003  
Part of  
Public Record



Re: Finance Docket No. 34178, Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. – Control – Iowa, Chicago & Eastern Railroad Corporation - 207435

Finance Docket No. 34178 (Sub-No. 1), Dakota, Minnesota & Eastern Railroad Corporation – Terminal Trackage Rights – Union Pacific Railroad Company - 207436

Dear Secretary Williams:

I have enclosed for filing in the above-captioned proceeding an original and 25 copies of Union Pacific Railroad Company's Petition for an Emergency Order (UP-5).

One additional copy is enclosed. Please indicate receipt and filing by date-stamping the enclosed extra copy and returning it to our messenger.

Thank you for your assistance.

Sincerely,

Michael L. Rosenthal

cc: William C. Sippel, Esq. (by facsimile)  
All Parties of Record

**EXPEDITED CONSIDERATION REQUESTED**

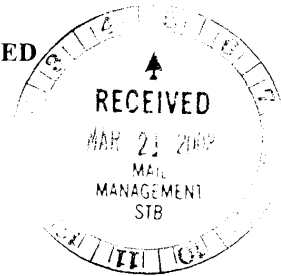
BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34178

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
AND CEDAR AMERICAN RAIL HOLDINGS, INC.  
– CONTROL –  
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

Finance Docket No. 34178 (Sub-No. 1)

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
– TERMINAL TRackage RIGHTS –  
UNION PACIFIC RAILROAD COMPANY



ENTERED  
Office of Proceedings

MAR 21 2003

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**PETITION FOR AN EMERGENCY ORDER**

Union Pacific Railroad Company ("UP") hereby seeks an emergency order preventing Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") from engaging in unauthorized operations over UP-owned track in Owatonna, Minnesota (the "Owatonna Trackage"), in violation of 49 U.S.C. § 11323, as well as the Board's decision in *Dakota, Minnesota & Eastern R.R. & Cedar American Rail Holdings – Control – Iowa, Chicago & Eastern R.R.*, STB Finance Docket No. 34178 (STB served Feb. 3, 2003) ("*DM&E Control*").

In *DM&E Control*, the Board denied DM&E's application for terminal trackage rights that would have enabled DM&E to operate over UP's Owatonna Trackage in order to use an existing connection between UP's trackage and Iowa, Chicago & Eastern Railroad Corporation ("IC&E"). See *DM&E Control* at 18-19. The Board expressly

contemplated that DM&E and UP would negotiate an agreement to use the connection or, failing an agreement, that DM&E would construct its own connection to IC&E at Owatonna. *See id.* at 19. The Board's expectations were manifested in its requirement that the parties report to the Board on April 4, 2003, regarding the status of their negotiations. *See id.* at 19, 22.

Flouting the Board's decision, DM&E has indicated that, as early as Monday, March 24, it intends to use the existing connection with IC&E, even though it has not negotiated an agreement with UP. *See Verified Statement of John H. Rebensdorf ("Rebensdorf V.S.")* at 2.<sup>1</sup> DM&E now maintains that it does not need the terminal trackage rights it sought and the Board denied in *DM&E Control*.

DM&E's proposed operations are unauthorized. DM&E has not obtained Board approval or exemption for the rights necessary to conduct such operations. To the contrary, the Board explicitly denied DM&E's application for trackage rights needed to conduct such operations in *DM&E Control*. *See DM&E Control* at 19.

Under these circumstances, the Board has the inherent authority enjoin DM&E's proposed operations in order to ensure "the integrity of its processes and the appropriateness of the conduct of the parties appearing before it." *SF&L Ry. – Acquisition & Operation Exemption – Toledo, Peoria & Western Ry. Between La Harpe & Peoria, IL*, STB Finance Docket No. 33995 (STB served Jan. 21, 2003) at 3. The Board also has the authority to issue appropriate orders to enforce its *DM&E Control* decision and prevent irreparable harm to UP under 49 U.S.C. §§ 721(b)(4) and 11327.

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<sup>1</sup> The Rebensdorf Verified Statement is at Tab 1 hereto.

## **I. BACKGROUND**

The Board should be intimately familiar with most of the pertinent facts from its recent consideration and denial of DM&E's application for terminal trackage rights in *DM&E Control*. See *DM&E Control* at 17-19.

DM&E operates through Owatonna using trackage rights over UP's Owatonna Trackage, which connects to DM&E's Rapid City-Winona mainline on the east and west sides of town. UP's Owatonna Trackage contains a physical connection between UP and IC&E, but DM&E does not have the right to use that connection. Instead, when it acquired its east-west mainline from UP's predecessor in 1986, it only negotiated and paid only for overhead rights allowing it to "bridge" its trains across the entirety of the UP trackage at Owatonna to carry out movements on its Rapid City-Winona line. DM&E was thus precluded from using the connection with IC&E at Owatonna, except for the interchange of certain traffic originating or terminating in Owatonna. See *Rebensdorf V.S.* at 3-4; see also *DM&E Control*, Comments of Union Pacific Railroad Company (UP-4), at 8-10.

*DM&E* not only recognized this restriction but sought to exploit it for its own advantage in *DM&E Control* by seeking terminal trackage rights that would have enabled DM&E to use the existing connection with IC&E. The Board denied DM&E's request, noting that "the real reason for the terminal trackage rights application appears to be that the price DM&E will pay [to use the connection] would be established by us rather than through negotiations with UP." *DM&E Control* at 18. The Board concluded that the matter was one that "must be resolved by the parties" through negotiations, but it established a process for the parties to "report back to the Board on the status of their negotiations." *Id.* at 19.

UP has engaged in good faith negotiations with DM&E.<sup>2</sup> UP has made several reasonable proposals and counterproposals, and it remains willing to negotiate. *See* Rebensdorf V.S. at 5-6. UP's latest offer – which would require DM&E to pay \$200,000 up front and an additional \$300,000 in five years (or when DM&E begins to operate PRB coal trains over the connection) – is a small fraction of DM&E's cost of building a new connection. *See id.* at 2, 6-7. UP had previously proposed an interim arrangement that would have allowed DM&E to begin operations immediately for essentially nominal compensation, but DM&E rejected that proposal. *See id.* at 2. Instead, DM&E has said it intends to begin operating over the connection without any agreement with UP based on its newly-developed assertion – described by DM&E as a “policy” – that it needs no additional rights. DM&E's current self-help approach is all the more inappropriate in light of UP's good faith attempts to reach a negotiated solution and UP's offer to provide DM&E with interim rights allowing DM&E to begin connecting with IC&E immediately.

DM&E's negotiating position has not been as straightforward. After the Board denied DM&E's application for terminal trackage rights, DM&E initially offered less than it had before the Board rejected its terminal trackage rights application. DM&E also asserted for the first time ever that it does not need anything more – neither the terminal trackage rights it sought, nor an agreement with UP or the new connection it could build – in order to connect with IC&E. Rebensdorf V.S. at 4. In letters to UP and a filing with the Board, DM&E now asserts the right to use the Owatonna Trackage and the existing

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<sup>2</sup> UP will provide a detailed status report on April 4, 2003, the date established by the Board in *DM&E Control*. Mr. Rebensdorf provides a brief synopsis of the current state of those negotiations.

connection with IC&E to “bridge to itself via trackage rights over IC&E, which were approved by the STB in [*DM&E Control*].” DME-13 at 3 n.1; *see also* Rebensdorf V.S. at 4. DM&E has recently indicated that, as early as Monday, March 24, it intends to operate its trains over UP’s Owatonna Trackage in order to use the connection with IC&E at Owatonna. *See id.* at 4-5.

**II. DME’S PROPOSED OPERATIONS ARE UNAUTHORIZED AND INCONSISTENT WITH THE BOARD’S DECISION IN *DME CONTROL***

DM&E may not operate over UP’s Owatonna Trackage to use the existing connection with IC&E without obtaining Board authority. DM&E never obtained the necessary authority for voluntary trackage rights pursuant to 49 U.S.C. § 11323. The Board denied DM&E’s application for terminal trackage rights pursuant to 49 U.S.C. § 11102 in *DM&E Control*. DM&E’s recent assertions of authority to operate over UP’s Owatonna Trackage in order to connect with IC&E contravene its representations to the Board and the Board’s decision in *DM&E Control*.

**A. DM&E Never Obtained Authority To Use UP’s Owatonna Trackage To Connect With IC&E**

DM&E did not seek or obtain authority to connect with IC&E when it acquired rights over UP’s Owatonna Trackage. The scope of DM&E’s rights is unambiguous: they are for “overhead” movements across the entire segment only, allowing DM&E to connect its mainline west of Owatonna with its mainline east of town, but not allowing any intermediate connection with IC&E or any other rail lines except in connection with traffic originating or terminating in Owatonna. *See* Rebensdorf V.S. at 3.<sup>3</sup> DM&E

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<sup>3</sup> It is well known that “‘overhead’ trackage rights (also known as ‘bridge’ trackage rights)” are “trackage rights that do not allow [the tenant] to access intermediate points on

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acknowledged in its application for terminal trackage rights that its existing rights “preclude DM&E from using the connection with IC&E at Owatonna except for the interchange of certain traffic originating or terminating at Owatonna.” *Terminal App.* at 4.<sup>4</sup> When it sought authority to implement its trackage rights in 1986, DM&E’s verified notice of exemption reflected the restrictions contained in the trackage rights agreements. *See* Verified Notice in Finance Docket No. 30889, dated Aug. 14, 1986, Ex. A (“Trackage rights at Owatonna include [sic] 2.5 miles of overhead trackage rights from M.P. 88.6 to M.P. 86.1 and trackage rights incident to serving industries at Owatonna (from M.P. 88.6 to M.P. 87.9).”).<sup>5</sup> When the exemption took effect, it authorized only the rights described in DM&E’s notice: it thus authorized DM&E’s bridging of traffic between its own lines west and east of Owatonna, but it did not authorize DM&E to use its rights to connect with any other rail lines at Owatonna. *See Dakota, Minnesota & Eastern R.R. – Acquisition & Operation – Chicago & North Western Transportation Corp.*, ICC Finance Docket No. 30889 (ICC served Sept. 8, 1986).

DM&E now asserts that it can use its Owatonna trackage rights to “bridge” traffic to IC&E by using the trackage rights over IC&E that DM&E acquired in *DM&E Control*. However, this assertion is flatly contrary to DM&E’s representations during the

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the trackage rights lines – except insofar as access to such points is expressly provided.” STB Finance Docket No. 32760 (Sub-No. 21), *Union Pacific Corp., Union Pacific R.R., & Missouri Pacific R.R. – Control & Merger – Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Railway Co., SPCSL Corp., & The Denver & Rio Grande Western R.R. (General Oversight)*, Decision No. 20, served Dec. 20, 2001 at 4.

<sup>4</sup> We use the abbreviation “Terminal App.” to refer to DM&E’s Application for Terminal Trackage Rights, dated August 28, 2002, in STB Finance Docket No. 34178 (Sub-No. 1). Page references are to the consecutive numbering used in the filing.

<sup>5</sup> Excerpts are at Tab 2 hereto.

*DM&E Control* proceedings. In *DM&E Control*, DM&E told the Board that “the operative agreements between DM&E and UP . . . preclude DM&E from using the connection with IC&E at Owatonna except for the interchange of certain traffic originating or terminating in Owatonna.” *Terminal App.* at 4.

During the *DM&E Control* proceedings, DM&E never suggested an exception for traffic that it could “bridge” to itself trackage via rights over IC&E. To the contrary, it told the Board that it needed terminal trackage rights to “make possible DM&E’s operation via trackage rights over IC&E’s line between Owatonna and Mason City.” *Terminal App.* at 3. In fact, DM&E told the Board that its notice of exemption for trackage rights between Owatonna and Mason City was contingent on its obtaining terminal trackage rights over UP’s Owatonna Trackage. *See App.* at 8.<sup>6</sup> DM&E thus clearly acknowledged that neither its existing rights nor its acquisition of new trackage rights over IC&E provided the necessary authority use the existing connection with IC&E at Owatonna.<sup>7</sup>

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<sup>6</sup> We use the abbreviation “App.” to refer to the Application, dated August 28, 2002, in STB Finance Docket No. 34178.

<sup>7</sup> Indeed, the entire premise of DM&E’s application for terminal trackage rights was that, absent those rights, DM&E could not use the connection with IC&E at Owatonna. *See, e.g., Terminal App.* at 3 (“Without such relief, DM&E and IC&E would be unable to effectuate the new competitive traffic routings made possible by the DM&E/IC&E combination.”).

DM&E has recently suggested that it can use the connection at Owatonna to “bridge” traffic to its trackage rights over IC&E, and was seeking additional rights only so that it could “interchange” traffic with IC&E at Owatonna. DME-13 at 3 n.1. This is pure fabrication. In *DM&E Control*, DM&E was quite clear that it did not want to interchange traffic at Owatonna, but wished to do so elsewhere along its proposed Owatonna-Mason City trackage rights. *See DME-2* at 45 & n.7; *DM&E-6* at 15 (“Conducting DM&E and IC&E interchange at Owatonna would inefficiently split existing crew operating patterns and require at least a three-carrier routing for DM&E traffic to be interlined to Cedar River Railroad Company at Lyle, Minnesota, or Iowa Northern Railway Company at Plymouth Springs, Iowa.”). DM&E thus asserted a need for terminal trackage rights for exactly the

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B. DM&E's Position Contravenes The Board's Decision in *DM&E Control*

DM&E's assertion of a right to use the existing connection with IC&E at Owatonna is a direct repudiation of the Board's decision in *DM&E Control* to deny DM&E's application for terminal trackage rights. The Board clearly understood that DM&E could not use the connection with IC&E as DM&E presently intends. It explained that DM&E and IC&E "cannot interchange traffic or otherwise connect" in Owatonna because DM&E had obtained only "overhead trackage rights" in 1986. *DM&E Control* at 17. It specifically noted that DM&E had made its notice of exemption for trackage rights over IC&E contingent upon approval of its terminal trackage rights application. *See id.* at 19. It allowed the notice of exemption to take effect, even though it was denying DM&E's terminal trackage rights application, because it was "convinced that, one way or another, there will be, in the not too distant future, a DM&E/IC&E connection at Owatonna." *Id.* at 19-20.

The Board clearly did not believe, as DM&E presently asserts, that DM&E already possessed the authority necessary to connect with its trackage rights over IC&E at Owatonna. When it rejected DM&E's terminal trackage rights application, the Board expected DM&E to negotiate for the necessary rights with UP, and, if the negotiations failed, to construct its own connection at Owatonna. *See id.* at 18-19. DM&E's present position flouts the Board's authority.

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sort of operations – movements by DM&E trains from DM&E's east-west mainline to DM&E's trackage rights over IC&E – that it now intends to commence without obtaining any additional rights.

### **III. INJUNCTIVE RELIEF IS APPROPRIATE UNDER THE CIRCUMSTANCES**

In *DM&E Control*, DM&E sought precisely the same rights that it now asserts it already has. After the Board's decision denying its application for terminal trackage rights, DM&E reversed course. DM&E's current self-help approach is flatly inconsistent with its position in *DM&E Control*. It is an outrageous effort to circumvent the Board's denial of terminal trackage rights and the process of commercial negotiations that the Board acted to encourage in *DM&E Control*. The Board should not tolerate this abuse of its processes.<sup>8</sup>

Under the present circumstances, the Board has authority – and, we submit, the responsibility – to act to prevent DM&E's gambit. First, the Board has the inherent authority to enjoin DM&E's proposed operations in order to ensure “the integrity of its processes and the appropriateness of the conduct of the parties appearing before it.” *SF&L Ry. – Acquisition & Operation Exemption – Toledo, Peoria & Western Ry. Between La Harpe & Peoria, IL*, STB Finance Docket No. 33995 (STB served Jan. 21, 2003) at 3.

Second, the Board has authority under 49 U.S.C. § 11327 to make an appropriate order supplemental to *DM&E Control* in order to hold DM&E to its representations in that proceeding.

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<sup>8</sup> UP recognizes that the Board typically refrains from addressing disputes over the scope of voluntary grants of trackage rights. This case does not involve such a dispute. As discussed in the text, DM&E conceded in *DM&E Control* that “the operative agreements between DM&E and UP for DM&E's use of UP's [Owatonna] trackage preclude DM&E from using the connection with IC&E at Owatonna” in the manner DM&E intends to use UP's Owatonna trackage. *Terminal App.* at 4. UP is simply asking the Board to enjoin DM&E from flouting the Board's decision in *DM&E Control* and engaging in unauthorized operations over UP's Owatonna trackage.

Finally, the Board has authority under 49 U.S.C. § 721(b)(4) to enjoin DM&E from engaging in unauthorized operations over UP's Owatonna Trackage to prevent UP from suffering irreparable harm. It is black-letter law that the type of continuing trespass threatened by DM&E is an "irreparable harm" that justifies injunctive relief. *See, e.g., Greyhound Lines, Inc. v. Peter Pan Bus Lines, Inc.*, 845 F. Supp. 295, 302 (E.D. Pa. 1994) (enjoining one bus company from driving over another bus company's property because "continuing trespass is properly enjoined").<sup>9</sup>

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<sup>9</sup> Although UP is not seeking preliminary injunctive relief, it could clearly meet the standard established in such cases. First, as already discussed, DM&E's trespass would constitute irreparable harm. Second, UP has an overwhelming case on the merits that DM&E's proposed operations are unauthorized. Third, no other parties will be harmed if the Board maintains the status quo – particularly in light of UP's willingness to enter into an interim arrangement with DM&E. Finally, the public interest will be well-served by preventing DM&E from engaging in unauthorized operations and preserving the integrity of the Board's processes.

**IV. CONCLUSION**

The Board should reaffirm its conclusion in *DM&E Control* that DM&E has no authority to operate over UP's Owatonna Trackage in order to connect with IC&E in Owatonna and enjoin DM&E from engaging in such unauthorized operations.

Respectfully submitted,

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*Attorneys for Union Pacific Railroad  
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March 21, 2003

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, hereby certify that on this 21st day of March, 2003, a copy of the foregoing Petition for an Emergency Order was served by first class mail, postage prepaid or by a more expeditious manner of delivery on the following:

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Michael L. Rosenthal



**VERIFIED STATEMENT**  
**OF**  
**JOHN H. REBENS DORF**

My name is John H. Rebensdorf. I am Vice President-Network and Service Planning for Union Pacific Railroad Company ("UP"). I hold a Bachelor's Degree in Civil Engineering from the University of Nebraska and a Master's Degree in Business Administration from Harvard University. I began my railroad career in 1961 in the Mechanical Department of the Chicago, Burlington & Quincy Railroad Company, and between 1962 and 1967 I was employed in the Operating and Engineering Departments of the Chicago, Rock Island and Pacific Railroad Company ("Rock Island"). I joined Union Pacific Corporation in 1968. In 1971, I came to Union Pacific Railroad as Manager of Budget Research, becoming Assistant Controller in 1976, Assistant Vice President-Planning & Analysis in 1980, Assistant Vice President-Finance in 1984 and Vice President-Strategic Planning in 1987. I was appointed to my present position in 1998.

I have been actively involved in negotiations with the Dakota Minnesota and Eastern Railroad ("DM&E") over DM&E's desire to use UP-owned trackage at Owatonna, MN (the "Owatonna Trackage") to connect with the Iowa Chicago & Eastern Railroad ("IC&E").

I am submitting this statement in response to DM&E's attempt to seize, by self help, rights which the Board expressly denied in its February 3, 2003 decision in Finance Docket No. 34178 (the "DM&E Control" proceeding). In that case, DM&E requested the Board to grant it "terminal trackage rights" over the UP



Owatonna Trackage so that it could make a direct connection between DM&E and IC&E at Owatonna, allowing an interchange between DM&E and IC&E south of Owatonna on DM&E's separate trackage rights over IC&E's Owatonna-Mason City line. DM&E expressly represented to the Board that, without the "terminal trackage rights," it could not conduct this operation. However, the Board, in its February 3 decision, denied DM&E's request based in part on its expectation that the parties would be able to reach an agreement.

Since the Board issued its decision, UP and DM&E have been negotiating over DM&E's use of the Owatonna Trackage. As I will discuss further below, UP currently has a very attractive offer on the table that, if accepted, would permit DM&E immediately to use the Owatonna Trackage in the manner it desires. The price would be a small fraction of what it would cost DM&E to build its own connection, as authorized in the Board's January 30, 2002 PRB Construction decision.<sup>1</sup> UP has also offered an interim arrangement allowing DM&E to commence operations immediately for a small per-car charge pending further negotiations over a permanent arrangement.

Two days ago, however, UP learned that DM&E intended to begin operating trains to IC&E at Owatonna beginning as early as Monday, March 24. DM&E is now claiming it never needed "terminal trackage rights" – or any agreement with UP or new connection as authorized in its PRB Construction – to

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<sup>1</sup> Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction Into The Power River Basin, served January 30, 2002.

make this connection, in spite of what it told the Board in the DM&E Control proceeding.

I. DM&E's Current Rights

DM&E's existing rights to operate over the Owatonna Trackage are governed by two separate agreements made when DM&E was formed in 1986. These agreements, and their background, are fully described at pp. 35-38 of the Verified Statement of Jerald B. Groner previously submitted in the DM&E Control proceeding.<sup>2</sup> Briefly, these agreements gave DM&E rights to use the Owatonna Trackage (1) to "bridge" between the segments of DM&E's original main line running east and west from Owatonna, (2) to serve industries located on the Owatonna Trackage and interchange that traffic with C&NW (now UP) or Soo Line (now IC&E) at Owatonna; and (3) to interchange traffic that originates or terminates at Owatonna Canning Company (now Chiquita Processed Foods) with either C&NW (UP) or Soo (IC&E). As can be seen, DM&E's rights to handle traffic to/from Soo (IC&E) at Owatonna are specific and limited. There was never any ambiguity in the meaning of DM&E's "bridge" rights under these agreements. DM&E did not have the right to connect with the IC&E line except for the limited purposes stated in the agreement. DM&E itself admitted, in the DM&E Control filing that it could not

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<sup>2</sup> The Groner statement is included in the "Comments of Union Pacific Railroad Company" in Finance Docket No. 34178 and 34178 (Sub-No. 1) dated November 14, 2002.

connect or interchange with IC&E at or via Owatonna without the "terminal trackage rights" it was seeking.<sup>3</sup>

It was only after the Board denied DM&E's request for terminal trackage rights that DM&E, for the first time, asserted a startling new theory – that it already has all of the rights it needs to connect, without restriction, with IC&E at Owatonna. DM&E's new theory, as best I understand it, is based on the trackage rights it obtained over IC&E's Owatonna-Mason City line in Finance Docket No. 34178 (Sub-No. 2). DM&E is now claiming that with its new rights over IC&E the movement between DM&E and IC&E has magically become a "bridge" move permitted by the 1986 agreements. The blatant inconsistency of this position with the well-understood scope of DM&E's rights, and with DM&E's express representations to the Board that it needed terminal trackage rights to "make possible the DM&E's operation via trackage rights over IC&E's line between Owatonna and Mason City," does not appear to trouble DM&E.

UP has repeatedly and consistently rejected the suggestion that DM&E has any such rights, and it initially appeared that DM&E did not intend to act on its claim. However, two days ago, we received information that DM&E was telling shippers it would have service from the Dakotas to Chicago via Mason City beginning Monday, March 24. I talked to Kevin Schieffer, DM&E's President, in the

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<sup>3</sup> For example, at p. 3 of DM&E's "Terminal Trackage Rights" application, DM&E stated: "Without such relief [terminal trackage rights], DM&E and IC&E would be unable to effectuate the new competitive traffic routings made possible by the DM&E/IC&E combination. The trackage rights sought herein would also make possible DM&E's operation via trackage rights over IC&E's line between Owatonna and Mason City as contemplated in Finance Docket No. 34178 (Sub-No. 2)."

early afternoon of Thursday, March 20, to determine DM&E's intentions. He pointedly refused to deny these reports, stating that DM&E intends "to move traffic as the agreement allows".<sup>4</sup>

## II. UP - DM&E Negotiations

DM&E's actions are particularly unreasonable in light of the status of the negotiations between UP and DM&E that have occurred since the Board's February 3 decision.<sup>5</sup> The Board indicated in that decision that it expected the access and compensation issues to be resolved by negotiation because both parties had incentives to reach an agreement somewhere between zero and the cost DM&E would save by not having to build the Owatonna connection authorized in PRB Construction.

UP has made multiple offers to DM&E, all of which involved compensation well below what DM&E would likely have to pay to construct a new connection. Initially, UP proposed a very low cash payment by DM&E coupled with changes to a UP-IC&E joint facility near Kansas City. This proposal – which UP made on February 5, within days of the Board's February 3 decision – was

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<sup>4</sup> DM&E is in a position to force this issue through self-help because UP recently (in November 2002) agreed to permit DM&E to maintain and dispatch the Owatonna trackage in return for a reduced trackage right fee. That agreement explicitly states it does not address or attempt to resolve the "access" issues presented by DM&E's terminal trackage rights case. Had DM&E revealed its intention to use its dispatching control to seize new access rights without UP's consent, UP would never have agreed to permit DM&E to dispatch the trackage.

<sup>5</sup> I have attached hereto a chronological set of the correspondence between the parties subsequent to the Board's February decision. See Exhibit A hereto.

considerably more favorable to DM&E than the proposals UP had made prior to the decision in a good faith attempt to reach quick agreement with DM&E. On February 28 we made two proposals to DM&E: one addressing only the issue of compensation for additional rights in Owatonna and the other proposing a mutually beneficial trade of additional rights, with DM&E receiving rights at Owatonna and UP receiving additional rights with respect to a joint facility near Kansas City. In this proposal it was made clear to DM&E that if we could satisfactorily resolve the Kansas City joint facilities issues, that we would reduce the charge for the Owatonna access to a "nominal" amount. We also offered DM&E an interim operational arrangement so they could immediately begin to connect with IC&E via Owatonna. We were willing to waive any charges under this interim arrangement, again subject to resolving the Kansas City joint facility issue.<sup>6</sup> DM&E rejected this arrangement.

When DM&E continued to object to resolving the Owatonna and Kansas City issues together, we submitted a new proposal for Owatonna only, which was subsequently revised to reduce the up front cash payment. The current UP proposal would give DM&E all of the access rights it seeks for an up front cash payment of \$200,000 and an additional \$300,000 in five years, or earlier when DM&E begins service from the PRB or when a change control occurs.<sup>7</sup> This offer is a fraction of what it would cost DM&E to build the new connection at Owatonna

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<sup>6</sup> This offer is reflected in my letter to Mr. Schieffer of February 28, 2003, which is included in Exhibit A.

<sup>7</sup> This offer is reflected in my letter to Mr. Schieffer of March 19, 2003, which is included in Exhibit A.

authorized in PRB Construction. Based on DM&E's submissions in the latter case, the cost of an Owatonna connection, including land acquisition, would likely be around \$3 million.<sup>8</sup> UP remains prepared to enter the same interim arrangement that we proposed on February 18, but which DM&E rejected in favor of implementing its plan to "bridge" traffic without any additional rights or Board authorization.

In light of UP's quite reasonable position, it is clear that DM&E is in a position to do exactly what it desires *with UP's agreement*. Instead, it has forced UP to seek Board relief by threatening self help that flouts the limitations of DM&E's existing authority and this Board's DM&E Control decision. DM&E's negotiating tactics appear to have reflected a similar strategy.

Following the Board's February 3 decision, DM&E offered terms which were less attractive to UP than DM&E proposals made before the Board's decision. Only in its March 18 offer does DM&E come close to what it had on the table prior to February 3. UP's current offer dated March 19 was based on the structure DM&E proposed on March 18. However, DM&E has rejected that proposal. My distinct impression is that DM&E believes that through a legal sleight of hand, they can

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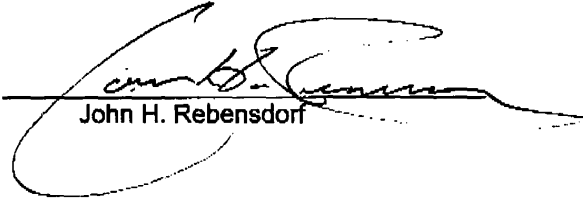
<sup>8</sup> Testimony and tables contained in the Verified Statement of David Levy, July 1999, on behalf of DM&E in the PRB Construction case appears to estimate a cost of \$4.1 million for the Owatonna connection. However, \$250,000 of this represents the cost of power switches, which could likely be deferred until coal starts moving. In addition, the \$4.1 million figure included 40% for engineering/construction management/contingencies, which appears high (the Board used a 20% factor for these items in a recent SAC case involving Wisconsin Power & Light). Removing the power switches and applying a 20% additive would suggest total construction costs of approximately \$3 million.

force access in Owatonna and, failing that, they hope to get the Board to alter its decision, rather than reaching a negotiated agreement with Union Pacific.

**DECLARATION**

John H. Rebensdorf, under penalty of perjury, declares and verifies that he has read the foregoing statement, knows the facts stated therein, and that said facts are true as stated.

Dated: March 21, 2003.



John H. Rebensdorf



**Exhibit A**

JOHN H. REBENS DORF  
Vice President - Network  
And Service Planning

UNION PACIFIC RAILROAD COMPANY



1416 Dodge Street  
Omaha, Nebraska 68179  
(402) 271-4279  
Fax (402) 271-3987

February 5, 2003

VIA FAX (605) 782-1299 and  
U.S. Mail

Mr. Kevin V. Schieffer  
President & CEO  
Dakota, Minnesota & Eastern  
Railroad Corporation  
140 N. Phillips Ave.  
Sioux Falls, SD 57104

Dear Kevin:

We have been negotiating a potential settlement of the Owatonna connection issue for a period of time. We believe that it is in the best interests of both the UP and DM&E to reach a settlement that will meet both our needs.

Enclosed is a draft of a "UP - DME - ICE Settlement Agreement". The Draft Agreement is a modification of prior versions that laid out the main items for discussion. We are, with this proposed Draft Agreement, trying to reach a conclusion that we believe will satisfy both our needs in an expeditious manner.

The proposal modifies the previous drafts in the following manner:

- The cash compensation is reduced from \$400,000 to \$100,000, payable \$50,000 at signing of the Agreement and \$50,000 at initiation of the PRB train operations, or five years from the date of the agreement, whichever occurs first.
- The Hartland to Albert Lea trackage rights fees are reduced from \$0.15 per car mile to \$0.12 per car mile.
- The dispatching service standards and the remedies for failure to meet the standards have been made more favorable to the IC&E than those in the present Supplemental Agreement governing the present dispatching operation. Note that the volume of traffic on the line is approximately 70% UP and failure to meet the performance standards by the UP would mean IC&E, at its option, would dispatch the line with only 30% of the traffic.

Kevin, settlement of the Owatonna connection issue is in both of our interests and will facilitate the prompt effectuation of the benefits of DM&E/IC&E common control.

Since Jerry Groner is retiring from the UP on February 7<sup>th</sup>, please contact me if you have any questions or comments concerning the Draft Agreement.

Very truly yours,

A handwritten signature in black ink, appearing to be "Jerry Groner", written in a cursive style.

Enclosure

**DRAFT – February 5, 2003**

**UP – DME – ICE SETTLEMENT AGREEMENT**

This Settlement Agreement, made and entered into as of this \_\_\_\_ day of February, 2003, by and between the DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION ("DM&E"), the IOWA, CHICAGO & EASTERN RAILROAD CORPORATION ("IC&E") and the UNION PACIFIC RAILROAD COMPANY ("UP").

**UP/DME – OWATONNA**

1. Owatonna Interchange. The September 3, 1986 Overhead Trackage Rights Agreement is hereby modified to allow DM&E the unrestricted right to use UP trackage at Owatonna for handling or interchange of traffic to or from IC&E.
2. Ongoing restrictions. Notwithstanding Section 1, above, nothing in this Agreement shall relieve DM&E of its obligations with respect to "Essential Traffic" as that term is defined in the May 3, 1996 "Colony Line Car Supply, Service and Divisions Agreement" ("CSSDA"), implemented as part of the "Colony Line Asset Purchase Agreement" dated February 9, 1996.
3. Cash Compensation. DM&E shall pay to UP the sum of \$100,000, payable \$50,000 at signing of this Agreement and \$50,000 at least 30 days before the first PRB coal train originated by DM&E enters the Owatonna Trackage, or five (5) years from the date of this agreement, whichever occurs first.
4. Right of First Refusal. UP shall provide DM&E the right of first refusal before selling the Owatonna Trackage.

**UP/DME – HARTLAND TO ALBERT LEA**

- 1) (A) Hartland to Albert Lea. The September 3, 1986 Grant of Trackage Rights over C&NW to DM&E (Hartland – Mason City) ("1986 Agreement") is hereby modified as follows: For so long as DM&E has sole use of trackage from Hartland, MN (M.P. 107.0) to the clearance point for the Curtis switch at the UP Spine Line in Albert Lea, MN (M.P. 119.4) (hereinafter "Hartland Trackage"), DM&E shall assume the maintenance and dispatching obligations therefor. DM&E shall maintain the Hartland Trackage to FRA Class 1 standards (or better), provided that if for any reason in the future the line or the maintenance of the line is returned to UP, DM&E shall ensure that such trackage is returned to UP in FRA Class 2 condition, or better. In consideration for and upon the

assumption of such maintenance obligations, any and all trackage rights payment obligations of DM&E related to the Hartland Trackage as of the date hereof shall terminate. In lieu thereof, DM&E shall pay to UP Trackage fees of twelve cents (\$0.12) per car mile. Said fees shall be escalated pursuant to the provisions of the 1986 Agreement, beginning in the first quarter of 2004. In the event UP admits another carrier on the Hartland Trackage, DM&E's maintenance obligations hereunder shall terminate. UP shall provide DM&E the right of first refusal before selling the Hartland Trackage.

(B) Interchange. DM&E shall be entitled to access the IC&E at Albert Lea, MN and Mason City Iowa, and to the Iowa Northern at Manly, IA for all traffic except for Essential Traffic as defined above and PRB coal traffic, either loaded or empty. Access to the IC&E at Mason City shall be through a new interchange connection to be constructed and maintained at the sole cost and expense of DM&E and/or IC&E. Any other upgrades to interchange tracks at Albert Lea or Manly shall be at DM&E's sole cost and expense.

#### **UP/ICE - POLO TO AIR LINE JUNCTION**

1. Polo. That certain Supplemental Agreement, dated April 13, 1999, shall remain in full force and effect except as amended and modified hereinafter.

Sections 7, 8 and 9 are hereby modified as follows:

A) At UP's option, IC&E shall transfer to UP the dispatching of the Joint Line from the KCT facility in Kansas City under the terms of the Polo Line Agreements, with the following understandings:

IC&E and UP will establish service standards for all IC&E trains that operate on the Joint Line. It is mutually agreed that UP shall dispatch the Joint Line in such a manner as to make it possible to achieve the following train performance standards for IC&E trains, excluding delays not attributable to dispatching (e.g., third party involvement, IC&E caused delay, acts of God, etc.), and subject to such exceptions as may be mutually agreed to.

(i) Running Time - Monthly average of at least 80% of IC&E trains within one hour and fifteen minutes running time, Polo to Birmingham (provided track speeds support the current running time as adjusted for slow orders placed on the Joint Line); and

(ii) Entry Time - Monthly average of at least 90% of IC&E trains within fifteen minutes or less delay per train to enter the Joint Line at Air Line Junction and Polo.

If UP fails to meet the train performance standards specified in the preceding Paragraph (i) or (ii) for any period of four (4) consecutive calendar months, IC&E may elect to notify UP under this paragraph that the train performance standards have not been met. In this event, UP will have a cure period of two (2) calendar months following the month in which such notice was given to bring operations into compliance with such train performance standards. If UP meets such standards during any calendar month of the cure period, the cure period shall expire and a new four (4) month period will commence with the month subsequent to the month in which the standards were met. If UP fails to meet such standards during the second calendar month of the cure period, IC&E shall have the option of resuming dispatching of the Joint Line under the same term and conditions of this agreement, with UP and IC&E reversing roles as to dispatching responsibilities and accountability.

B) The design and relocation of said dispatching facility and equipment and software shall be developed jointly by UP and IC&E and shall be subject to the approval of both railroads, which approval shall not be unreasonably withheld. Said system and design shall be compatible with both the UP's dispatching system and the joint dispatching system at IC&E/DM&E headquarters. UP and IC&E shall equally pay for the equipment, programs, communication and other costs necessary to undertake such relocation of dispatching to the KCT facility. Such relocation shall include automation and remote control of the Truman Bridge, which bridge shall be remotely operated as part of the dispatch function described herein. Payment for any equipment and software, communication or other costs necessary for interface/connections to the DM&E/IC&E joint dispatching facility in Sioux Falls or UP's facility in Omaha shall be included in the cost of moving the dispatching and remote control of the Truman Bridge, which shall be equally paid for as described above.

(i) DM&E's share of the costs and expenses described in (B) of this Polo to Air Line Junction Section shall be paid 25% as billed in the year incurred, 50% as billed on June 1 in the following year, and 25% as billed on June 1 in the next succeeding year.

(C) At UP's option, IC&E shall transfer maintenance of all or part of the Joint Line to UP under the terms and conditions of the Polo Line Agreements.

In witness hereof, the parties hereto have caused this Settlement Agreement to be executed as of the date first hereinabove written.

WITNESS: DAKOTA, MINNESOTA & EASTERN  
RAILROAD CORPORATON

\_\_\_\_\_ By: \_\_\_\_\_

WITNESS: IOWA, CHICAGO & EASTERN RAILROAD  
CORPORATION

\_\_\_\_\_ By: \_\_\_\_\_

WITNESS: UNION PACIFIC RAILROAD COMPANY

\_\_\_\_\_ By: \_\_\_\_\_





140 NORTH PHILIPS AVENUE  
SIOUX FALLS, SOUTH DAKOTA 57104  
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FAX: (605) 782-1299

**DM&E**

**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

**KEVIN V. SCHIEFFER • President & CEO**

6 February 2003

John Rebensdorf  
V-P Network & Service Planning  
Union Pacific Railroad  
Union Pacific Bldg.  
1416 Dodge Street  
Omaha, NE 68179

Dear John:

Thank you for your letter of February 5, 2003. As I discussed with Jerry Groner before the STB Board decision, I believe that for purposes of this proceeding we should focus on the issue of compensation for terminal trackage rights that would allow an interchange at Owatonna. In light of the 60-day reporting requirement imposed by the STB since that time, we believe it is particularly important to focus the Owatonna discussion to the issues of direct relevance to that proceeding. We are happy to continue to pursue whether we can reach a mutually acceptable arrangement on the Polo and Hartland issues, but they need to be addressed on their own merits.

On the issue of terminal trackage rights compensation for Owatonna interchange, we propose that for any traffic interchanged we would offer to (1) pay twenty-five cents per car-mile (loaded and empty) and (2) assume all costs and responsibility for the track maintenance on the relevant track. Particularly in light of the fact that UP would have no maintenance or other costs associated with this track, we believe that twenty-five cents per car-mile is well above market rates for this area and track type.

As I explained to Jerry upon learning of UP's position to suspend prior negotiations on Owatonna until after the STB's decision, we have pursued other means of serving shippers on these two lines. For crew district efficiency, flexibility, and many other reasons, we would greatly prefer establishing an Owatonna interchange. But given the timeliness of the need to begin realizing the benefits of this transaction, DM&E began exploration of an alternative approach to buy IC&E's line running through Owatonna in order to obviate the need for the restricted "interchange" of traffic and provide a means of achieving the permissible "bridging" of traffic at Owatonna. Based on the STB decision granting trackage rights, we are of the opinion that bridging traffic there can be implemented today without affecting an acquisition.

Our preferred approach remains to negotiate a mutually acceptable settlement allowing an Owatonna interchange, but it is critical to our shippers and our business plan that, via either interchange or bridging, we do begin traffic movement for our customers as quickly as possible.

With respect to the unrelated issues of Hartland and Polo, it appears we are fairly close on Hartland and still have a pretty wide gap on Polo. We do not feel there is adequate incentive or protections in the most recent UP Polo counter-offer that would justify IC&E yielding dispatch authority over this line. Our proposal included positive incentives for us to permit UP to dispatch the line, with the ability to retain our control if we felt it was not working as expected (provided that we would give up much of the incentives if we exercised that option). The proposal contained in your February 5 letter does not provide such incentives, and the provisions for regaining dispatch appear difficult, at best. In any event, we do not want to be in a position of having to undertake any adversarial proceeding to dispatch our own railroad if we later encounter unanticipated problems.

I am not wed to any particular approach on this matter, but so that we can determine whether or not it is productive to explore it further I want to emphasize that our most immediate and fundamental concern is that of yielding ownership rights over a critical piece of our railroad which would have long term implications for both operations and underlying valuation. We are not opposed to UP dispatching our railroad in this area, but we cannot give up control. I would be happy to visit with you by phone or travel to Omaha with Bob Brownell to meet with you personally if you think there is a reasonable possibility of achieving your objectives somewhere within this framework. But we do not think it is reasonable to yield dispatch authority without significant value and without retaining ownership rights (albeit with reasonable disincentives for us to exercise them arbitrarily) in the event that unanticipated problems develop in this critical area.

I hope we are able to come to a successful and mutually agreeable solution on all three issues, but I think the Owatonna matter is particularly timely in light of the Board's recent decision and our shippers' immediate needs. Again, I am available to meet at your convenience. We look forward to resolving these issues as soon as possible.

Sincerely



Kevin V. Schieffer  
President & Chief Executive Officer

KVS:lma (KVS\word\jrebusdor\020603)



JOHN H. REBENDORF  
Vice President - Network  
And Service Planning

UNION PACIFIC RAILROAD COMPANY



1416 Dodge Street  
Omaha, Nebraska 68179  
(402) 271-4279  
Fax (402) 271-3987

February 18, 2003

VIA FACSIMILE - (605) 782-1299 AND U.S. MAIL

Mr. Kevin V. Schieffer  
President & CEO  
Dakota, Minnesota & Eastern Railroad Corporation  
140 North Phillips Avenue  
Sioux Falls, SD 57104

Dear Kevin:

Thank you for your letter of February 6. We are disappointed that your letter does not respond to the proposal we made on February 5. In fact, it appears that you have taken off the table the framework for a settlement that has been discussed between our two companies up to the time of the STB voting conference. We find this perplexing, particularly given the significant concessions we made in our February 5 proposal in order to meet your concerns and requirements.

In the remainder of this letter I will respond to the points made in your February 6 letter.

First, with regard to the Owatonna interchange, your compensation proposal is dramatically different (and less economically attractive) than anything we have discussed previously. Our position has been and will continue to be that there must be a sharing of the costs you will avoid by not building the connection which the STB has authorized. In addition, we must protect the "Essential Traffic" as defined in the May 3, 1996, Colony Line agreement. Your offer of assuming all track maintenance costs seems to ignore the agreement between DM&E and UP dated November 5, 2002, which transfers maintenance responsibility of the Owatonna trackage to DM&E in return for reduced trackage rights payments from DM&E to UP. We do not intend to pay twice for this transfer of responsibility.

Second, your position on Owatonna interchange seems to be that, now that the STB has denied DM&E's request for "terminal trackage rights" authority, DM&E never needed this authority in the first place. This position is obviously untenable, inconsistent with DM&E's position in the DM&E-IC&E control

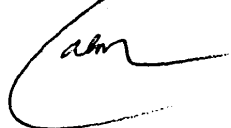
proceeding, and does nothing to move the ball forward on a negotiated settlement. In addition, your characterization of UP "suspending" negotiations until after the STB decision, is unfortunate. As we informed you prior to the STB decision, given the imminent announcement of the decision we simply chose to wait for the results. We then made our February 5 offer in an effort to reach a quick settlement without STB involvement. As you are aware, the February 5 offer is significantly more favorable to DM&E than the offer we had on the table prior to the decision. Unfortunately, you have chosen not to respond to any of the points in the February 5 offer.

Your position that the Polo issue must be separated from the Owatonna issue is confusing. We have consistently linked these two issues and you have negotiated with us and made offers in response to that linkage. Now you want to separate the issues. You certainly know that tradeoffs of this nature are common in the railroad industry and, in fact, are a common and accepted practice in global business transactions. In fact, DM&E follows this same practice. As recently as January 20, your John Brooks, in responding to a UP request for access to a storage facility at Faribault, MN, placed on the table a request to reduce switching charges at two unrelated locations. Mr. Brooks' response did not seem to address our request "on its own merits" as you seem to want to apply in this case to your Owatonna request. The linkage between Owatonna and Polo is essential to the improved offer we made on February 5. Absent this linkage, we would not have made the economic offer which we did on February 5.

Kevin, we recognize your concerns on the dispatching issue and made a good faith effort in our February 5 offer to address those concerns, based on accepted industry practice. We believe we have addressed your concerns. Your February 6 letter now raises issues of "valuation" and "control" and "ownership rights". I think it is important to note that UP owns outright one of the two tracks between Birmingham and Polo, and the trackage between Birmingham and Airline Junction is jointly owned 50-50 by ICE and UP. Thus, I don't understand your concerns about how our proposal to simply shift dispatching responsibility affects "valuation" and "ownership rights". Our proposal addressed your "control" concerns in a fair and equitable way to both parties. Thus, again I am perplexed by your lack of response.

Recognizing the positions of both DM&E and UP, I do agree that we should meet to see if the differences can be bridged. At a minimum, I believe, we owe this to the STB and to the members of Congress that you have contacted on the Owatonna issue prior to the STB decision. We will not, however, conduct negotiations publicly in the media. I will have my office call your folks to set up a mutually acceptable time and place.

Very truly yours,

A handwritten signature in black ink, appearing to be the name "Kevin", written over a large, stylized, handwritten "C" that serves as a flourish or part of the signature.





KEVIN V. SCHIEFFER  
President & CEO

24 February 2003

John Rebensdorf  
Vice President – Network & Service Planning  
Union Pacific Railroad Company  
1416 Dodge Street  
Omaha, NE 68179

Dear John:

Thank you for your letter of February 18, 2003. I recognize that you have not been directly involved in the ongoing negotiations. But your letter seriously misstates our position, and the record. I will try to bring you up to date with our perspective as to past negotiations, and to clarify our position as it stands today and going forward – which hopefully will facilitate our upcoming discussions on Thursday, February 27<sup>th</sup>. I understand we will meet at 8:00 a.m. in your office. I have changed plans to attend this, but want to advise in advance that I do have an 11:00 a.m. flight departing Omaha that I cannot miss. If for any reason you think this might not allow enough time, I would be happy to start earlier but I really need to catch that flight.

First, you express disappointment that we did not respond to the proposal you made on February 5, 2003. We did respond, both before (the gist of its contents was conveyed to us verbally in advance), and after receiving your counterproposal. But I will to supplement that for the record in this letter.

1. Linkage. First, let me try to address the confusion you expressed over our position to keep Owatonna and Polo separate. This is not a new position for DM&E or IC&E. We stated it at the outset. You are quite correct that UP consistently linked these two unrelated issues. But anyone there who was listening would also have to acknowledge that DM&E consistently resisted that linkage, and agreed to it only because of our desire to attempt a settlement of all issues prior to an STB decision. It is important to recognize that our talks were intended to be settlement discussions that would obviate the need for us to press the case before the STB. The STB decision was not imminent when UP determined to suspend negotiations shortly after our December 31, 2002 letter, when I called to inquire as to UP's position. While one month of silence predated formal notification of UP's official position, it was pretty obvious to me in telephone discussions seeking to bring this to closure that UP had determined to not reply until after the STB ruling. Since one of the primary reasons we agreed to the linkage was to reach a settlement, I do not think our position on this is either inconsistent or confusing. I

J. Rebensdorf  
February 24, 2003  
Page 2 of 4

verbally relayed the substance of my January 27<sup>th</sup> e-mail to UP in early January. It makes even more sense to me to keep these matters separate in light of the STB's subsequent decision and the mandated report. From a practical standpoint, I see it as difficult to bridge the gap on our respective Owatonna positions within the 60-day time frame. As importantly, I think it would greatly confuse our ability to provide a coherent report to the STB relative to our positions on Owatonna if the report is cluttered with unrelated matters such as Polo. On a final historical note, you have a misperception that DM&E thought there was anything wrong with UP's desire to link these two unrelated issues. But it is wrong to suggest that it is only now that we want to separate the issues.

Having said all that, where do we go from here? If we can figure out a way to bridge the gap on Polo, we will again abide by UP's request to link these issues. But for reasons stated above, pursuing discussions relative to UP's desire to dispatch Polo would have to include a clear understanding as to how we develop a record that focuses on Owatonna. I propose the following. First, UP needs to determine whether a Polo agreement can be accomplished with respect to our legitimate concerns. They have not changed since the day we started these discussions, and need to be addressed if we are going to reach agreement. Second, if after seriously addressing our restated concerns set forth below and our meeting next Thursday, UP believes there is a reasonable chance to reach final agreement on the far more complicated Polo issue prior to the STB deadline, we agree to pursue this on a dual track. One track would be limited to Owatonna issues and will presents a clear record on our respective positions as they relate exclusively to the Owatonna issue and compensation. The other track would incorporate UP's desired linkage to the unrelated Polo issue. Third, we agree that the mandated report to the STB should not include anything but our positions on the stand-alone Owatonna issue on its own merits (I understand that your position with respect to Owatonna may be different in the version that lacks Polo linkage), and will not include Polo or any other issue not directly related to operations at or compensation with respect to Owatonna. To do otherwise would, in my view, hopelessly confuse the issue in the public record.

2. Owatonna Compensation. We do not ignore our prior assumption of maintenance obligations relative to Owatonna, and we do not expect UP to pay twice for the transfer of that maintenance responsibility. The reference to DM&E's assumptions of maintenance responsibility was – as noted in our letter – included to highlight the reasonableness of our proposed trackage rights fees in light of the fact that the track owner would have no ongoing maintenance obligations. I would also agree that it is less attractive for UP than our original offer made in the context of the settlement. Again, given the fact that UP suspended settlement discussions until after the decision, I do not think that is an unreasonable position. In any event, we still believe that in its own right, the compensation proposal we made is extremely fair by any industry standard. But we welcome any counter-offer you might propose.

In reference to your comments relative to "Essential Traffic", I have not reread that agreement in the recent context of these negotiations, but based on my understanding of that agreement I do not recall how either our Owatonna proposal or yours would affect



J. Rebensdorf  
February 24, 2003  
Page 3 of 3

it one way or the other. To the extent you feel any of the various Owatonna proposals increase UP's exposure on Essential Traffic, I would certainly be willing to address it. That is not our expectation.

3. Inconsistent Position on Owatonna. Your letter demonstrates a basic misunderstanding of our position on an Owatonna interchange. We sought terminal trackage rights partly because, as noted in my previous letters to UP, we would very much like to effectuate an interchange in Owatonna. Prior to the STB decision, we had not claimed a right to interchange traffic at Owatonna, nor did we claim an ability to bridge traffic in any direction other than east-west. In light of the STB decision denying our request for terminal trackage rights, we have not now pursued any claimed right of interchange at Owatonna. But in light of STB's grant of DM&E trackage rights over IC&E to the south and north, DM&E obviously now does have the ability to bridge that traffic. What you describe as an untenable position is not DM&E's.

4. Valuation & Control. Valuation and control are not new issues we raised for the first time on February 6. They have been repeated throughout this negotiation, and need to be recognized if we are to reach agreement. It seems fundamental to me that yielding this level of control certainly would significantly affect valuation, and obviously yield material ownership control. I am not certain how to respond if you think otherwise, but would be happy to discuss it at our meeting on the 27<sup>th</sup>.

5. DM&E Response to UP's February 5 Letter. You discuss at some length your disappointment that we did not respond to your proposal. We have sent two different proposals on this issue, which have barely been acknowledged much less responded to by UP. I do not think it unreasonable to expect UP to do as you ask of DM&E. As noted above, we have responded to your letter. But I will try again.

First, we acknowledge that parts of your post-STB decision proposal were more favorable than your older pre-STB decision proposal. But both UP offers basically ignored our proposals to you and our consistently stated concerns. With respect, our concerns over the dispatching issue have not been addressed. One concern is losing control over ultimate dispatch authority on that line. We cannot agree to allow dispatching to get beyond our control if things do not work out as expected. Our approach to this issue was to develop an incentive for us to allow UP to exercise this right on our behalf, but to retain the right to resume dispatching if it creates unexpected problems – albeit at significant cost to us. If UP is confident in its belief that its dispatch of this line will not cause problems for IC&E, then our approach should work. But UP's approach requires us to assume the risk that UP's dispatching will not cause us problems. The standards and repetitive cure periods in UP's latest proposal make it highly unlikely, in our view, that we would have adequate relief if problems develop. More importantly, we simply do not want to place ourselves in a position of having to resort to adversarial proceedings to retain our rights. This is not a right we are prepared to give up on such a critical piece of line.

J. Rebensdorf  
February 24, 2003  
Page 4 of 4

We do see an opportunity to maximize value, and a scenario where UP could dispatch this line on a long-term basis if major problems do not develop. We believe the potential exists for a win-win opportunity here, but if it is to work it needs to work for both of us. If UP absolutely cannot agree to a scenario which involves IC&E retaining ultimate control over dispatch if in our judgment problems develop, then I cannot see how we are going to reach an agreement on this issue. It is a high priority for me to reach an acceptable agreement with UP. But I do not want to waste your time or mine if there is not a reasonable chance of success. If we allow UP to exercise our dispatch rights, we expect reasonable compensation commensurate with the benefits to UP. And we fully expect to lose much of that compensation as a disincentive in the event we resume dispatching. We do not expect you would be interested in pursuing this if there were not reasonable disincentives built in to prevent IC&E from casually exercising its rights without cause. We are willing to discuss that, but we will not subject our uncontested rights today to the potential for a contested proceeding tomorrow.

6. Media. With respect to your concerns over the media, I believe we have religiously respected our agreement on that subject in the past. The only minor problem of which I am aware of historically is a public comment by a UP spokesman in the Mankato newspaper long ago, shortly after we agreed not to negotiate that issue publicly. UP corrected it as soon as I brought it to your office's attention, and the problem never recurred. If you have any impression that DM&E has ever violated a confidentiality in this regard, I would appreciate knowing of it. On a related note, I do think it is important to coordinate as to exactly how we are to fulfill the obligations of the STB report in a professional manner that does not compromise the position of either company. I am happy to explore that with you as well.

If you think there is a potential for a common ground in all of this, I look forward to pursuing it further on the 27<sup>th</sup>. If not, you hope you will respect our right to not agree to your unrelated linkage on Owatonna as we have respected your right to not agree to our unrelated linkage over access to a storage facility in Faribault. Thanks you for your consideration, and I look forward to seeing you on the 27<sup>th</sup>.

Sincerely,



Kevin V. Schieffer  
President & Chief Executive Officer

KVS:lma (kvs\word\jrebensdorf\022003)



JOHN H. REBENSDORF  
Vice President - Network  
And Service Planning

UNION PACIFIC RAILROAD COMPANY



1416 Dodge Street  
Omaha, Nebraska 68179  
(402) 271-4279  
Fax (402) 271-3987

February 26, 2003

Mr. Kevin V. Schieffer  
President & CEO  
Dakota, Minnesota & Eastern Railroad Corporation  
140 North Phillips Avenue  
Sioux Falls, SD 57104

Dear Kevin:

We have received your letter of February 24. Time obviously does not allow for a lengthy response of the type you sent before our February 27 meeting, nor do I think a lengthy response is necessary. All I want to do in this letter is highlight a few points.

First, while I was not dealing directly with you, I was directly involved in formulating our negotiating position. Thus, I understood clearly what your position was, and I do not believe my February 18 letter in any way misstated DM&E's position in the negotiations.

Second, I think you know that UP did not "suspend" negotiations, and nothing more needs to be said. The record is clear. I do, however, believe that we could resolve the Owatonna and Polo issues in 60 days. We could resolve them in 60 minutes if you would stop trying to force your desired result on UP through the political process and would, instead, seriously negotiate with us.

Third, I am agreeable to a two track negotiation. Track One would address the Owatonna issue only. The time deadline would be March 14 in order to accommodate your March 17 appeal date to the STB. Track Two would be Owatonna and Polo together and would be completed by April 24. If we cannot agree on Track Two, then whatever we agree to in Track One will stand. You need to know that the cost to DM&E of Track One as it pertains to Owatonna will be significantly higher than Track Two. Also, we will report the status of both Tracks One and Two to the STB.

Kevin, I do not want to engage in lengthy letter writing. The issues are straightforward. We intend to move forward in good faith and believe we can resolve our differences by the reporting date.

Very truly yours,

A handwritten signature in black ink, appearing to be "John H. Rebensdorf", written over a horizontal line.





KEVIN V. SCHIEFFER  
President & CEO

28 February 2003

John Rebensdorf  
V-P Network & Service Planning  
Union Pacific Railroad  
Union Pacific Bldg.  
1416 Dodge Street  
Omaha, NE 68179

Dear John:

We disagree over most of your letter of 26 February, which I read with some surprise following our meeting on the 27<sup>th</sup>. After reflecting on it and our discussions since, I thought it would be useful to summarize our positions.

For all the reasons stated in my letter of 24 February, we remain convinced that it would be a mistake to confuse the public record with the unrelated Polo-Kansas City issue. Your condition of reporting to the STB on the unrelated Polo-Kansas City track defeats the purpose of the dual track approach. We respectfully decline to link UP's unrelated Kansas City subject to the Owatonna matter that is at issue before the STB. We went down that path once before at UP's request, solely for the purpose of reaching a pre-decision settlement. It reached a dead end with more than one month of UP silence. Whether you wish to call it "suspending" or "terminating" or "putting off" settlement discussions, or any other label, the fact is that UP ceased negotiations between my 31 December proposal and your 5 February letter.

I understand from our meeting that you believe that our proposal relative to trackage rights fees at Owatonna is too low in exchange for the uncontested right to interchange traffic at Owatonna. We provided our rationale for the fee offered. We look forward to your counter-offer and any supporting rationale for any UP proposal to allow uncontested interchange at Owatonna.

As to the suggestion that we consider a temporary "cease-fire" relative to our planned March 5 bridge movements at Owatonna, I have asked our marketing and engineering departments to provide me with an assessment of the implications of putting this off as it relates to shipper certainty and the construction season/capital budget issues. I have not been able to reach any labor union representative, as yet. As I expect you can appreciate, there could be significant labor implications for both railroads if we are forced to interchange anywhere other than Owatonna. Given the sensitive issues involved and the short time left before March 5<sup>th</sup>, my current thinking is to simply -- and unilaterally --

John Rebensdorf  
27 February 2003  
Page 2

LAW DEPT.

MAR 5 2003

commit to you now that we will delay any bridge or interchange revenue freight ~~between DM&E and IC&E~~ **READ UPRR** until at least March 17. If this thinking changes before March 17 based on shipper, employee or engineering feedback, I will notify you in advance. That will at least give us until your initial Owatonna March 14 settlement deadline to determine whether we might work out a mutually acceptable arrangement for an Owatonna interchange.

Thank you for taking the time to meet with us. We look forward to your reply.

Sincerely,

Dictated by MR. SCHIEFFER  
but sent without signature to avoid delay

Kevin V. Schieffer  
President & Chief Executive Officer

KVS:cj (kvs\word\jrebendorf\28Feb03)





JOHN H. REBENSORF  
Vice President - Network  
And Service Planning

UNION PACIFIC RAILROAD COMPANY



1416 Dodge Street  
Omaha, Nebraska 68179  
(402) 271-4279  
Fax (402) 271-3987

February 28, 2003

VIA FACSIMILE – (605) 782-1299 AND U.S. MAIL

Mr. Kevin V. Schieffer  
President & CEO  
Dakota, Minnesota & Eastern Railroad Corporation  
140 North Phillips Avenue  
Sioux Falls, SD 57104

Dear Kevin:

Consistent with the time schedule and two track approach that we discussed yesterday, Union Pacific proposes the following framework to resolve the Owatonna and Polo issues:

**UP/DME – OWATONNA (Permanent)  
(Track One)**

1. Use of Owatonna Trackage. The September 3, 1986, Overhead Trackage Rights Agreement would be modified to allow DM&E the unrestricted right to use UP trackage at Owatonna for handling or interchange of traffic to or from IC&E.
2. Ongoing restrictions. Notwithstanding Section 1, above, nothing in the new Agreement shall relieve DM&E of its obligations with respect to "Essential Traffic" as that term is defined in the May 3, 1996, "Colony Line Car Supply, Service and Divisions Agreement" ("CSSDA"), implemented as part of the "Colony Line Asset Purchase Agreement" dated February 9, 1996.
3. Cash Compensation. DM&E shall pay to UP the sum of \$500,000, payable at signing of the Agreement.
4. Right of First Refusal. UP shall provide DM&E the right of first refusal before selling the Owatonna Trackage.

This proposal is based on a sharing of the estimated costs avoided by DM&E in constructing either of the two alternatives approved by the STB for linking DM&E and IC&E in the Owatonna area.

### **UP/DME – OWATONNA (Interim)**

In order to allow DM&E to begin the operations at Owatonna contemplated by its common control transaction with IC&E on or about March 5, 2003, Union Pacific proposes to grant DM&E a temporary waiver of the use restrictions in the 1986 Overhead Trackage Rights Agreement to the extent necessary to permit DM&E to use UP trackage at Owatonna on an interim basis for handling or interchange of traffic to or from IC&E, excluding "Essential Traffic" as defined above. The interim period shall be for 60 calendar days beginning at 12:01 a.m. on March 5, 2003. The interim period may be extended by mutual agreement of the parties, but in no case will it extend beyond May 31, 2003. Compensation for use of UP trackage in Owatonna during the interim period shall be set at \$25 per car which DM&E moves to/from IC&E at Owatonna. UP may, at its discretion, forgive a portion or all of the interim compensation, subject to satisfactory resolution of Track Two (Owatonna and Polo combined).

The temporary waiver described above will not be raised or otherwise used by either party in any forum to establish a precedent for permanent use of, or compensation for, DM&E's use of the UP Owatonna trackage. In particular, the temporary waiver (i) will not, in any way, establish a basis or precedent for DM&E's use or interchange arrangement for the UP Owatonna trackage, either on a stand alone (Track One) or an Owatonna and Polo combined (Track Two) basis; (ii) will not be raised or otherwise used by the parties in any forum as a basis for permanent compensation for DM&E's use of the UP Owatonna Trackage; and (iii) will not be raised or otherwise used by DM&E in any forum as a basis for claiming rights to use the UP trackage inconsistent with the 1986 Overhead Trackage Rights Agreement following termination of the interim period described above.

If DM&E wishes to pursue the temporary waiver approach described above, please let me know and I will have our lawyers draft an appropriate agreement.

### **UP/ICE – POLO TO AIR LINE JUNCTION (Track Two)**

Union Pacific will reduce the up-front cash payment for the Owatonna rights to a nominal amount subject to agreement on dispatching of the Polo to Air Line Junction line on the following basis:

1. The general terms covering Polo to Air Line Junction contained in our draft of February 5 shall apply.

2. Change of control language will be inserted for a successor who purchases all of DM&E/IC&E to assume dispatching subject to the following terms:

- A. That the physical location for dispatching the line remain in the KCT co-located dispatching facility in Kansas City
- B. That dispatching responsibility shall alternate every five years between UP and DM&E/IC&E's successor beginning with DM&E/IC&E's successor if UP has dispatched the line for five years or more at the time of change of control.
- C. The performance standards, cure period, and associated remedies specified in our February 5 proposal shall apply to both UP and DM&E/IC&E's successor.

Kevin, we hope that these proposals can serve as the basis for resolving in a timely fashion both the Owatonna and Polo issues. Please call me if you have any questions or wish to discuss this further.

Very truly yours,

A handwritten signature in black ink, appearing to be "Kevin", written over a horizontal line.



JOHN H. REBENS DORF  
Vice President - Network  
And Service Planning

UNION PACIFIC RAILROAD COMPANY



1416 Dodge Street  
Omaha, Nebraska 68179  
(402) 271-4279  
Fax (402) 271-3987

March 6, 2003

VIA FACSIMILE - (605) 782-1299 AND U.S. MAIL

Mr. Kevin V. Schieffer  
President & CEO  
Dakota, Minnesota & Eastern Railroad Corporation  
140 North Phillips Avenue  
Sioux Falls, SD 57104

Dear Kevin:

I am in receipt of your February 28 letter. Since it did not address the proposal made in my February 28 letter, I am assuming that your letter was sent before you received the fax version of my letter.

As I said in our meeting on February 27 and reiterated in my February 28 letter, we have made offers to DM&E covering both tracks. If you want to ignore the Track Two offer (which includes the Polo-Kansas City issue) that is your choice and we will respect that.

As I indicated to you on February 27, there is nothing magical about the March 14 date. My letter of February 26 makes clear that this date was selected merely to recognize your March 17 appeal date to the STB.

Yours very truly,

A handwritten signature in black ink, appearing to be "John H. Rebensdorf", written over a large, stylized, handwritten "C" or "U" shape.





KEVIN V. SCHIEFFER  
President & CEO

18 March 2003

**VIA FACSIMILE (402-271-3987) AND OVERNIGHT MAIL**

Mr. John Rebensdorf  
V-P Network & Service Planning  
Union Pacific Railroad  
Union Pacific Bldg.  
1416 Dodge Street  
Omaha, NE 68179

Dear John:

Your letters of February 28 and March 6 caught up to me while I was on the road.

A. Kansas City issues. First, with respect to the Polo/Kansas City (Track Two) issue, consistent with my letter of 28 February this is a matter completely unrelated to Owatonna traffic and for reasons previously stated needs to be treated accordingly.

B. Interim approach. Second, with respect to the UP Interim proposal, we believe it is best to stay with the policy outlined in my letter of 28 February. We very much prefer to have the flexibility to interchange traffic at Owatonna. But we are prepared to go forward having our operations restricted to going through Owatonna only as a bridge move, based on the recently approved trackage rights. Consistent with my letter of the 28<sup>th</sup>, we are initiating that as and to the extent that marketing and engineering practicalities allow. While exclusive reliance on bridge moves is far less preferable than local interchange ability at Owatonna, we believe that approach is preferable to the UP Interim proposal. And, perhaps more importantly, if we are to establish shipper confidence and most effectively achieve the undisputed pro-competitive benefits of this transaction for our shippers, we need to demonstrate a permanent solution as soon as possible to ensure customer confidence, long-term marketing contract ability, and sound engineering planning.

C. Revised DM&E offer. Third, with respect to the UP Owatonna Track One proposal, we feel your February 28 proposal requires excessive immediate payments not relevant to trackage rights. However, we are prepared to provide the following enhanced new offer in the hopes of reaching prompt settlement:

1. Use of Owatonna Trackage. Notwithstanding any restrictions from the 1986 Agreements between C&NW and DM&E or any other restriction relative to UP rail lines in and around Owatonna, MN, to which DM&E or IC&E have trackage

John Rebensdorf  
March 18, 2003  
Page 2

or other rights or obligations (herein "Owatonna Trackage"), immediately following the execution of this agreement DM&E and IC&E shall have the unrestricted right to use the Owatonna Trackage to interchange or handle rail traffic. Said restrictions are hereby terminated.

2. Cash Compensation

- a. Any traffic interchanged with IC&E or handled by either IC&E or DM&E at Owatonna shall be included in and subject to the trackage rights rent provisions set forth in the 5 November 2002 letter agreement between the parties; and
  - b. DM&E shall pay to UP \$50,000 as a one-time payment, payable upon execution of this agreement; and
  - c. DM&E shall pay to UP \$300,000 as a one-time payment, payable on the date on which the first train of coal DM&E originates from the Wyoming Powder River Basin is transported over any portion of the lines constructed pursuant to the authority granted through STB Finance Docket 44307.
3. "Essential Traffic." Nothing in this agreement shall relieve DM&E of its obligations with respect to "Essential Traffic" as that term is defined in the May 3, 1996, "Colony Line Car Supply, Service and Divisions Agreement" ("CSSDA"), implemented as part of the "Colony Line Asset Purchase Agreement" dated February 9, 1996. The parties specifically agree that the CSSDA is not among the restrictions referred to in section 1 hereof, and that this agreement neither diminishes nor enhances either party's position relative to Essential Traffic.
4. Right of First Refusal. UP shall provide DM&E the right of first refusal before selling the Owatonna Trackage.

D. Comments. I noted from your letter that your proposal is based on a notion of sharing the estimated costs avoided by not having to construct a new Owatonna connection as part of the PRB construction case. I think that is a very important point to address in a bit more detail. First, we disagree that is a proper basis for compensation. But for purposes of this revised offer and applying UP's view of compensation, it would follow from it that the cash payments you are requesting as a result of that avoidance should not be made until the project is built. Notwithstanding our view that trackage rights rent alone is adequate compensation, we have included in this last offer two one-time cash payment components. These are not based on our acceptance of UP's "construction avoidance" theory, but simply included in the hopes of reaching a friendly and final resolution and preventing further legal fees and related expenditures. In the



John Rebensdorf  
March 18, 2003  
Page 3

event this does not result in prompt settlement with an immediate end to further legal proceedings, this component of the offer is automatically withdrawn.

Also, the cost avoidance issue is not applicable in the context of interchange rights vs. bridge rights. My interpretation is that this agreement does nothing to avoid future PRB Project construction costs at this stage. What it does do is give us the important right of interchange at Owatonna, thus avoiding operational inflexibility and labor issues relating to exclusive reliance on bridge moves. We are willing to pay for that and to avoid further litigation in our effort to bring this important service to our customers. This immediate connection is absolutely essential to a successful transaction and to the competitive opportunities that it will for the first time bring to many of our shippers.

One final matter we haven't addressed is how and what we report to the STB. Our interpretation on the STB order is that our collective reports are due by April 4. I would be happy to exchange draft reports with you ahead of time or even try to submit a joint one. But as we haven't established a procedure there, I am assuming our correspondence will be part of it. If there is anything in any of our letters that you consider confidential or outside the proper limits of including in an STB report for any other reason, I would welcome any suggestions you might have on that front.

More importantly, I hope the proposal and explanation herein gets us where we need to be for a successful resolution of this matter before then. I look forward to your thoughts. Feel free to call if you have any questions.

Sincerely Yours,

  
Kevin V. Schieffer  
President & Chief Executive Officer

KVS:lma (lvs:wordjrebensdorf 17 March)



## UNION PACIFIC RAILROAD COMPANY

JOHN H. REBENS DORF  
Vice President - Network  
And Service Planning



1416 Dodge Street  
Omaha, Nebraska 68178  
(402) 271-4279  
Fax (402) 271-3987

March 19, 2003

VIA FACSIMILE - (605) 782-1299 AND U.S. MAIL

Mr. Kevin V. Schieffer  
President & CEO  
Dakota, Minnesota & Eastern Railroad Corporation  
140 North Phillips Avenue  
Sioux Falls, SD 57104

Dear Kevin:

Thank you for your letter of March 18 containing a revised proposal to settle the Owatonna issue.

With regard to your revised Owatonna offer and consistent with the framework you proposed, we would be agreeable to a settlement on the following terms:

1. Use of Owatonna Trackage. The September 3, 1986, Overhead Trackage Rights Agreement would be modified to allow DM&E the unrestricted right to use UP trackage at Owatonna for handling or interchange of traffic to or from IC&E.
2. Ongoing restrictions. Notwithstanding Section 1, above, nothing in the new Agreement shall relieve DM&E of its obligations with respect to "Essential Traffic" as that term is defined in the May 3, 1996, "Colony Line Car Supply, Service and Divisions Agreement" ("CSSDA"), implemented as part of the "Colony Line Asset Purchase Agreement" dated February 9, 1996.
3. Cash Compensation.
  - a. Any traffic interchanged with IC&E or handled by either IC&E or DM&E at Owatonna shall be included in and subject to the trackage rights rent provisions set forth in the 5 November 2002 letter agreement between the parties; and
  - b. DM&E shall pay to UP \$200,000 as a one-time payment, payable upon execution of this agreement; and

c. DM&E shall pay to UP \$300,000 as a one-time payment, payable at least 30 days before the first train of coal DM&E handles from the Wyoming Powder River Basin is transported over any portion of the lines constructed pursuant to the authority granted through STB Finance Docket 44307, or five (5) years from the date of this agreement, whichever occurs first. Provided, however, that if there should be a change of control of either DM&E or IC&E before the five year period expires, that the \$300,000 payable to UP will be paid on the date of change of control.

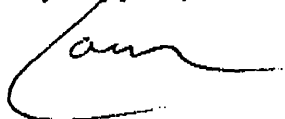
4. Right of First Refusal. UP shall provide DM&E the right of first refusal before selling the Owatonna Trackage.

Kevin, we believe this proposal strikes a balance between DM&E and UP's position on Track One and is a fair basis for a settlement of the Owatonna issue.

Finally, you state in Item B of your letter that DM&E intends to initiate a "bridge move" over the Owatonna Trackage "to the extent that marketing and engineering practicalities allow." This appears related to your claim that DM&E already has a contractual right to operate over the Owatonna trackage rights segment between DM&E owned trackage and the IC&E trackage over which DM&E obtained trackage rights in the Control proceeding. There is absolutely no basis in our existing agreements for such a claim.

Accordingly, this letter also is UP's written notice pursuant to Section 8.1 of the Overhead Trackage Rights Agreement that any use by DM&E of the Owatonna Trackage for such a "bridge move" will constitute a failure to perform and to comply with the covenants of the agreement and will permit UP to terminate the agreement as provided in Section 8.1. UP also reserves the right to seek other remedies at law or equity, or to take self help, to prevent DM&E's unauthorized use of UP's property.

Very truly yours,

A handwritten signature in dark ink, appearing to be "Lam", written over a horizontal line.



BEFORE THE  
INTERSTATE COMMERCE COMMISSION

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FINANCE DOCKET NO. 30889

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DAKOTA, MINNESOTA & EASTERN  
RAILROAD CORPORATION--EXEMPTION,  
ACQUISITION AND OPERATION--CHICAGO AND  
NORTH WESTERN TRANSPORTATION COMPANY

---

VERIFIED NOTICE OF DAKOTA, MINNESOTA &  
EASTERN RAILROAD CORPORATION PURSUANT  
TO 49 C.F.R. §§ 1150.31-34

---

Dakota, Minnesota & Eastern Railroad Corporation  
("DM&E") hereby provides notice that it will acquire and  
operate certain rail lines, together with incidental trackage  
rights, pursuant to the class exemption adopted by the  
Commission in Ex Parte 392 (Sub-No. 1), Class Exemption for the  
Acquisition and Operation of Rail Lines Under 49 U.S.C.  
10901, \_\_ I.C.C.2d \_\_ (served Jan. 15, 1986). See 51 Fed. Reg.  
2503 (Jan. 17, 1986). In support of this Notice, DM&E provides  
the following information required by 49 C.F.R. § 1150.33:

(a) Applicant:

Dakota, Minnesota & Eastern  
Railroad Corporation  
337 22nd Avenue  
Brookings, South Dakota 57006

(b) Applicant's Representative:

Betty Jo Christian  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-2661  
Telephone: (202) 429-8113

(c) Statement re Agreement:

On July 2, 1986, DM&E executed an Asset Purchase Agreement with the Chicago and North Western Transportation Company (C&NW) together with certain ancillary agreements, including those for the grant or assignment of incidental trackage rights. Any additional agreements that may be necessary to consummate the transaction are expected to be reached on or before the effective date of DM&E's Notice of Exemption.

(d) Operator:

DM&E will be operator of the property to be acquired in this transaction.

(e) Summary of Transaction:

Pursuant to the July 2, 1986 Asset Purchase Agreement and ancillary agreements described above, DM&E will purchase 826.6 route-miles of rail line from C&NW, and will be granted or assigned by C&NW 139.1 route-miles of trackage rights over lines within the jurisdiction of the Commission. The lines involved in this transaction are located within the states of South Dakota, North Dakota, Minnesota and Iowa. A total of 965.7 route-miles are being acquired by DM&E, including both the lines being purchased and the trackage rights being granted or assigned. A detailed description of the lines involved is set forth in Exhibit A to this Notice.

All of the lines that DM&E will purchase, or over which it will obtain trackage rights, are currently owned and operated by C&NW, with the exception of the line between Wolsey and Aberdeen, South Dakota, which is owned by the South Dakota Rail Authority and is currently operated over by C&NW pursuant to an overhead trackage rights agreement that will be assigned to DM&E. C&NW will retain limited easements in certain segments of the line located in Minnesota, but will not be entitled to make any

use of any of those easements for any purpose, including common carrier service, except on the occurrence of certain conditions subsequent, and subject to any required regulatory approval or exemption. The line-segments subject to the easements are described in detail in Exhibit B to this Notice.

DM&E's acquisition of the lines from C&NW is expected to be consummated on or shortly after August 21, 1986.

The address of the seller, C&NW, is One North Western Center, 165 North Canal Street, Chicago, Illinois 60606.

(f) Map:

A map indicating the area to be served by DM&E, including origins, termini, stations, cities, counties and States is attached as Exhibit C to this Notice.

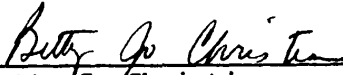
(g) Environmental Protection

The exemption of this transaction will not significantly affect the quality of the human environment.

A certificate of compliance with the notice requirements of 49 C.F.R. § 1105.11 is attached as Exhibit D to this Notice.

Pursuant to 49 C.F.R. § 1150.34, a caption summary in the form prescribed is attached as Exhibit E to this Notice.

Respectfully submitted,

  
Betty Jo Christian  
Timothy M. Walsh  
STEPTOE & JOHNSON  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-2661  
(202) 429-3000

Counsel for Dakota, Minnesota  
& Eastern Railroad  
Corporation

Dated: August 14, 1986



INCIDENTAL TRACKAGE RIGHTS GRANTED  
OR ASSIGNED BY C&NW TO DM&E

<u>Station</u>		<u>Milepost</u>		<u>Route Miles</u>
<u>From</u>	<u>To</u>	<u>From</u>	<u>To</u>	
Winona Yard	--	0.0	3.0	3.0
Owatonna	--	88.6	86.1	2.5*
Mankato Yard	--	129.6	131.3	1.7
Mankato Yard	--	82.6	86.2	3.6
Mankato Yard	--	0.0	2.9	2.9
Rapid City Yard	--	649.0	97.0	2.4**
Hartland	Mason City	107.0	57.6	48.6***
Wolsey	Aberdeen	705.0	779.4	74.4
TOTAL MILES OF TRACKAGE RIGHTS				<u>139.1</u>
TOTAL ROUTE MILES				<u>965.7</u>

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\*Trackage rights at Owatonna include 2.5 miles of overhead trackage rights extending from M.P. 88.6 to M.P. 86.1 and trackage rights incident to serving industries at Owatonna (from M.P. 88.6 to M.P. 87.9).

\*\*Trackage rights in the Rapid City Yard encompass two sets of mileposts, extending from M.P. 649.0 to M.P. 649.2/99.2 to M.P. 97.0, for a total distance of 2.4 miles.

\*\*\*Trackage rights from Hartland to Mason City encompass three sets of mileposts, extending from M.P. 107 to M.P. 119.2/252.4 to M.P. 225.2/48.4 to M.P. 57.6, for a total distance of 48.6 miles.